PUBLIC PROSECUTOR

v.

VASAVAN SATHIADEW & ORS.

HIGH COURT, SINGAPORE
TS SINNATHURAY J
[CRIMINAL CASE NO. 36 OF 1985]
6 OCTOBER 1989

CRIMINAL PROCEDURE: *Conspiracy - Voir dire - Admissibility of statements by the 3 accused - Sections 121(6), 121(5) Criminal Procedure Code (Cap. 113) [Sing] - Entries in diary - Failure to obtain signature of accused to statement - Effect - Section 120(3) - Language - Central Thai as opposed to Isan dialect - Interpreter - Whether competent - Confessions - Whether it is evidence against a co-accused - Defence of diminished responsibility - Expect evidence - Exception 7 to s. 300 of the Penal Code [Sing].*

The first, second and third accused were charged, in furtherance of the common intention of them all with having murdered Tan Tik Seah (Tan) at his flat between 10:30 p.m. and midnight on 24 October 1984.

A fourth person, Lee Chee Poh (Rose) was originally named in the charge. She is Tan's widow. She however pleaded guilty to a lesser charge of abetment of murder and was sentenced to 7 years imprisonment, backdated to 25 October 1984 the date of her arrest. She was released from prison on 26 June 1989. Rose gave evidence for the prosecution against the 3 accused.

Dr. Clarence Tan, an experienced forensic pathologist, concluded that Tan's death had been caused by asphyxia, due to strangulation.

Dr. Tan took the view that there had been an intense struggle during the course of asphyxiation.

During the trial, the prosecution sought the admission into evidence of 3 statements allegedly to have been made by each of the accused, the admissibility of all of which were challenged by their respective Counsel. The statements were:

(i) oral statements made by each of the accused to Inspector Teo.

(ii) statements made by each of the accused under s. 121(6) of the Criminal Procedure Code (Cap 113).

(iii) statements made by each of the accused under s. 121(5) of the Criminal Procedure Code.

Trial within the Trial
Vasavan - The first accused

(1) It is beyond reasonable doubt that Vasavan voluntarily made an oral statement to Inspector Teo. What Vasavan said to Inspector Teo became admissible by virtue of s. 121(5) as soon as this subsection was triggered by Vasavan having become an accused person.

The Court accepted Inspector Teo's evidence as to the recording of the s. 121(6) statement and admitted it into evidence.

(2) Inspector Teo had not been as punctilious in the recording of s. 121(5) statement as he had been in the case of the s. 121(6) statement.

Phan - The Second Accused

(1) Although there was evidence that Phan had some difficulty understanding central Thai, the Court was not prepared to believe that Phan was unable to comprehended everything P.C. Lee (the interpreter) said to him on the morning of 26 October and further that the answers given by Phan were not as a result of threats and inducements.

Phan's oral statements were admitted into evidence.

(2) As regards the s. 121(6) statement, the Court was of the opinion that there was a real danger that the warning was not explained to Phan adequately and accordingly the statement was not admitted into evidence.

(3) Given the additional factor of P.C. Lee's limitations as an interpreter, there was a real danger that material may have found its way into the statement for which Phan was not the source, therefore the s. 121(5) statement was inadmissible.

Wan - The third accused

(1) The Court did not believe that Wan was assaulted in the mini-bus or that he did not understand P.C. Lee. Further, he is much younger, educated to a point, literate and intelligent. The oral statement by him was voluntarily and admissible.

(2) Wan was unimpressive under cross-examination and the Court was satisfied that he understood the charge and the warning and that there were no threats or inducement, whether was he assaulted at any time and that the statement he voluntarily made was adequately interpreted and duly recorded by Inspector Teo.

Therefore the s. 121(6) statement is admissible.

(3) Although the Court has serious reservations as to the truth of Wan's allegations against P.C. Lee, it exercised its' discretion and ruled that the statement was inadmissible.

Held:

[1] Vasavan had failed to establish on his evidence, on a balance of probabilities, a case that brings him within exception 7 to s. 300 of the Penal Code.

[2] As regards Vasavan's own evidence as to his behaviour after he learned of his wife's affair, the Court regarded as significant the fact that his wife was not called as a witness and drew an inference adverse to Vasavan resulting from his omission.

Vasavan was found guilty as charged.

[3] The Court found that Phan played a pivotal role in organizing Tan's murder and on the basis of his s. 121(6) statement and his oral statements to Inspector Teo, that he joined in the attack upon Tan, and participated in the strangulation with the rope procured by Vasavan.

Phan was found guilty as charged.

[4] Wan took an active part in the strangulation of Tan, as he truly admitted both in his oral statement to Inspector Teo and in his s. 121(6) statement, both of which were properly recorded through the interpreters.

Wan was found guilty as charged.

[All 3 accused convicted as charged.]

Cases referred to:
PP v. Tan Keo Hock [1982] 2 MLJ 190
Haw Tua Tau v. PP [1981] 2 MLJ 49

Legislation referred to:
Criminal Procedure Code, [Sing], ss. 121(5), (6)
Internal Security Act 1960, s. 75
Penal Code [Sing], s. 300

For the 1st accused - Leo Fernando (Pillai Remesha Chandran with him); M/s. Leo Fernando
For the 2nd accused - Lim Choon Mong; M/s. Lim & Lim)
For the 3rd accused - V.C.S.Vardan; M/s. Manjit Darshan & Pns.

JUDGMENT

TS Sinnathuray J:

The first, second and third accused (respectively Vasavan, Phan and Wan) are charged, in furtherance of the common intention of them all, and of a certain Buakan Vajjarin (Ah Poo), who was never apprehended, with having murdered Tan Tik Seah (Tan), at his flat in Laguna Park between 10.30 p.m. and midnight on 24 October 1984.

A fourth person, Lee Chee Poh (Rose) was originally named in the charge. She is Tan's widow. However, on 17 October 1988, she pleaded guilty to a lesser charge of abetment of murder, and was sentenced to seven years' imprisonment, backdated to 25 October 1984, the date of her arrest. She was released from prison on 26 June 1989, a week or so before the trial commenced before us. Rose gave evidence for the prosecution against Vasavan, Phan and Wan.

Rose told us in evidence that she married Tan in 1969, following which they went to live in the Tan family residence in Potong Pasir. It was a kampong house, large enough to accommodate Tan's parents, most of his siblings, his adoptive brother Vasavan, and their respective families. Vasavan, who was by then already carried to a Thai woman called Amnoi, was very close to his adoptive parents and he had a close and affectionate relationship with Tan. Vasavan was also very fraternal and considerate towards Rose, who had no blood relatives in Singapore.

In 1977 Tan bought a flat in Laguna Park. He and Rose took up residence in it. One evening in 1980, Vasavan called at the Laguna Park flat. Rose was home; Tan was still at work. Vasavan told Rose that he had discovered that his wife, Amnoi, was having an affair with Tan, and that Tan and Amnoi had been deceiving them for some time.

About four Years later, to be more precise at about 2.00 a.m. on the morning of 24 October 1984, Tan was found dead by Rose. He was lying face-up on the floor of a room in the Laguna Park flat. A length of rope was wound tightly round Tan's neck, and there were signs of disarray in the room, as though a struggle had taken place. Dr Clarence Tan, an experienced forensic pathologist, concluded that Tan's death had been caused by asphyxia, due to strangulation. In his opinion the ligature, in the form of the rope, had been extremely tightly and effectively applied around Tan's neck. The constricting force had been intense. The ligature was uniformly even and taut in spite of the number of times it was wound round Tan's neck, and in Dr Tan's opinion the ligature was likely to have been applied by at least two persons. Among the many injuries found on Tan were fractures of the tips of both superior horns of the thyroid cartilage, and a fracture of the body of the thyroid cartilage. Dr Tan took the view that there had been an intense struggle during the course of asphyxiation.

Upon discovering Tan's body, Rose roused a neighbour who summoned the police.

At about 12.40 a.m on the morning of 26 October l984 Rose and Vasavan were formally arrested and charged with having conspired with each other to murder Tan. Vasavan was at the time employed as a site supervisor at a worksite in Loyang, at which a number of Thai workers were also employed. One of them was Phan, who was arrested at the Loyang work site at about 8.15 a.m. on 26 October 1984. Wan and Ah Poo were then employed at another worksite at Lorong Chuan. Wan was arrested at about 1.45 p.m. on the same day. Ah Poo, whom the police were also looking for, could not be found. Phan and Wan were charged with Tan's murder on 26 October, jointly with Rose and Vasavan.

In her evidence, Rose told us that following the disclosure to her by Vasavan of Tan's affair with Amnoi, Tan apologised to her and promised to behave. However, Vasavan told her that Tan had conducted himself like an animal, and was not to be trusted.

Rose told Vasavan, she thought in or about 1982, about Tan's affair with a certain Theresa, a divorcee. Rose had spent some money on witchcraft, in an effort to part Tan and Theresa, but to no avail. She asked Vasavan if he knew anyone with supernatural powers, but he said it was no use and that Tan would never be a good husband again.

In or about September 1983 Theresa had a son by Tan, and he told Rose about the child. She was very distressed and in due cause confided in Vasavan again. They talked in her car in the car park of Vasavan's block of flats, possibly in January 1984. She asked Vasavan to help her win Tan back from Theresa with the help of black magic. Vasavan told Rose that it was useless, and that Tan would only become involved with yet another woman. He said words to the affect: "Your husband will not love you any more. He will make life difficult for you. Both you and I are innocent, yet we are made to suffer because of him. He will not come back to you. If he continues to live in this world he will cause hardship to other women. Why don't we get some Thais to kill him?" Rose did not agree.

Later in 1984, Tan went overseas, telling Rose that it was a business trip. She discovered that he was lying. Her marriage to Tan was already under considerable strain. She was jealous and angry, mainly with Theresa, who had born Tan a son of whom Tan's mother was very fond, whereas Rose had produced no children. Tan insisted that Rose should visit his mother with Theresa's child, to signify to her mother-in-law that she accepted Theresa as Tan's mistress. Rose refused, and there were quarrels.

Rose contacted Vasavan, whom she regarded as her closest relative, in his flat. When Vasavan saw her off later, in the car park, Vasavan told Rose that Tan was a hopeless case, and did not love her any more and would never turn over a new leaf. He again suggested that Tan be put to death. Rose demurred at first, saying that she preferred to try again to separate Tan from Theresa by black magic, but Vasavan eventually prevailed upon her saying that he would arrange for Tan to die naturally with the aid of black magic. He asked for photographs of Tan which Rose supplied, she could not remember exactly when. Her recollection was that she supplied a total of four photographs, in sets of two, on two separate occasions three weeks apart. However, nothing happened to Tan and Vasavan explained that the black magic had been unsuccessful because Rose still love Tan.

In or about mid-1984, after the abortive attempts to bring about Tan's natural death, Tan told Rose that he wanted a divorce. He abused her, and said that he would make life difficult for her if she refused. He offered to give her the Laguna Park flat if she consented to a divorce, but Rose did not trust him. Once more she turned to Vasavan, who told her that Tan was beyond help and would continue to torture her. He suggested employing Thai labourers to kill Tan. Vasavan was insistent and Rose agreed, albeit half-heartedly.

In October 1984 Rose learned that Tan was going overseas. She informed Vasavan, and he asked her to provide him with two duplicate keys to their flat, and $4,500 for the Thais he intended to recruit. Rose had the keys made and withdrew $5,000 from her POSB account on 8 October 1984. She gave the keys to Vasavan, but withheld the money, as she still loved Tan, and was filled with doubt. She reasoned to herself that if she changed her mind, she could alter the locks to the flat.

However, Vasavan pressed her for the money, and she gave it to him some days after she handed him the keys. She told Vasavan that if the death of Tan could not be contrived to look natural, the plan should not be carried out. Vasavan replied that she should not worry, and that the Thais would do a good job.

Tan returned to Singapore from overseas on 23 October 1984. Rose met him at the Airport. He was unpleasant to her, as he was the following morning before leaving for work. Rose telephoned Vasavan. She was very depressed and cried. Vasavan said, words to the effect: "Listen to me and kill him. Take my advice. I will make sure everything is alright. Don't worry".

At about 4.00 p.m. that same day, Rose met Vasavan by arrangement at a coffee shop in Laguna Park. It was agreed between them that she would leave the flat at 8.00 p.m., and not return until after 1a.m. That night, about 8 p.m., Vasavan came to the flat alone. Rose let him in. He was carrying a plastic bag. As agreed, Rose left the flat. She was confused and depressed. In her heart she did not want Tan to die, but she remembered the things he had done to her. She got into her car, and after driving round the block and pausing in the vicinity of the flat, she drove off to a gambling den in Chinatown, where she spent the night playing mahjong. She returned to the flat at about 2 a.m., to find her husband dead.

The prosecution led evidence that, on the afternoon of the day that Tan met his death, Vasavan purchased a length of white nylon rope from a shop in Jalan Besar, similar to the rope used to strangle Tan.

Evidence was also led that Phan had informed his employer at Loyang in early October 1984 that he wished to return to Thailand on 20 October 1984. He approached the Project Managed again on that date and asked whether an airline ticket had been purchased for him. The Project Managed gave instructions on 22 October 1984, for an airline ticket to be purchased for Phan.

It was also established by the prosecution that Ah Poo and Wan, who were both on work permits valid until 31 May 1985, informed their employer at Chuan Park on 25 October 1984, the day after Tan was found dead, that they wished to return to Thailand for family reasons.

The Trial Within The Trial

The prosecution sought the admission into evidence of three statements alleged to have been made by each of the accused, the admissibility of all of which were challenged by their respective Counsel. The statements were:

(i) oral statement made by each of the accused to Inspector Teo Cheow Beng (Inspector "Teo");

(ii) statements made by each of the accused under s. 121(6) of the Criminal Procedure Code ("CPC"); and

(iii) statements made by each of the accused under s. 121(5) of the Criminal Procedure Code.

All references to sections of the Criminal Procedure Code are references to sections of Cap 113, and not of the revised Edition (Cap. 68).

We heard evidence and argument with regard to the admissibility of these statements in a trial within the trial, and we now deal with the issues which arose with regard to the admissibility of the statements, and our conclusions.

I Vasavan

(i) The oral statement.

It was Inspector Teo's evidence that he began questioning Vasavan in his office at about 8.05 p.m. on the night of 25 October. The questioning continued until 12.50 a.m. on the morning of 26 October, and during the course of it Vasavan made an oral statement. Inspector Teo wrote down what Vasavan said in his field book, in indirect speech, and read it back to Vasavan. During the early part of the interview Inspector Teo had been assisted by Det/Cpl Rahman Khan ("Rahman"), but at about 10.25 p.m. he had instructed Rahman to escort Rose to Changi Prison hospital, and thereafter Rahman had taken no further part in the questioning of Vasavan.

Vasavan's version of the interview was in sharp contrast to that of Inspector Teo. He alleged that there were threats of one kind or another, and that he was assaulted by Inspector Teo. However, it was conceded by him, and on his behalf that nothing he might have said either to Inspector Teo or to Rahman, was affected by anything said or done to him while questioning was in progress. Voluntariness was, therefore, not in issue.

Rather, Vasavan's story was that he had made no statement at all to Insp Teo who had, in any event, left the room between 9.00 p.m. and 10.00 p.m. Vasavan had not seen him again until about 4.00 a.m. the next morning, and the questioning of Vasavan had been substantially carried out by Rahman, to whom Vasavan had made no statement. In the event, the question we had to decide was whether Vasavan made oral statements to Inspector Teo at all, or whether Inspector Teo had invented his evidence and made a false entry in his field book.

We were entirely satisfied that the questioning of Vasavan was substantially conducted by Inspector Teo between 8.05 p.m. on 25 October and 12.40 a.m. on 26 October, and that it was not Rahman who had conduct of the interview. We accepted the evidence of Inspector Teo and Rahman that the latter took no part in the questioning of Vasavan after 10.25 p.m. on 25 October, when he was instructed to escort Rose to Changi Prison hospital. This evidence was supported by entries in Rahman's notebook, and in the station diary, and by WPC Sim Huay, and entries in her diary. It follows that we disbelieved Vasavan's version of the interview.

We were urged by Counsel for Vasavan to exclude the oral statement because Inspector Teo's account should not be believed. If, said Counsel, Inspector Teo made a record of what Vasavan said in his field book, why did he not take the simple precaution of getting Vasavan to sign the entry, thereby signifying his acceptance of it?

We think it is right that at the time the oral statement is alleged to have been made, Vasavan was not yet an accused person, and that any statement made by him, and reduced into writing, ought not only to have been read over to, but also signed by, Vasavan in order to fulfil the requirements of s. 120 (3). Inspector Teo failed to secure Vasavan's signature to the entry in the field book, but we were not prepared for that reason, to conclude that the Inspector was lying, and that Vasavan made no statement to the Inspector at all. Once Vasavan became an accused person, the statement he made to Inspector Teo, was rendered admissible by s. 121(5). That is so whether or not the statement was recorded; and whether or not it was read back or signed, but subject always to the statement having been voluntary.

We concluded, beyond reasonable doubt, that Vasavan voluntarily made an oral statement to Inspector Teo, which the latter decided to record in his field book in indirect speech. What Vasavan said to Inspector. Teo became admissible by virtue of s. 121 (5), as soon as this sub-section was triggered by Vasavan having become an accused person.

We admitted Vasavan's oral statement into evidence

(ii) The s. 121 (6) statement.

The prosecution case was that this statement was recorded by Inspector Teo between 4.25 a.m. and 6.55 a.m. on the morning of 26 October, in Inspector Teo's office. The Inspector's evidence was that he read the charge to Vasavan and administered the warning to him. A copy of the charge and of the warning were served on Vasavan, who had asked for the charge and warning to be read to him. Inspector Teo did not know whether this was because Vasavan was not in possession of his glasses. In any event, the charge and the warning were read, and the latter was explained. Vasavan then volunteered the statement. No questions were put to him. At the conclusion of the statement it was read back to Vasavan, who confirmed it to be true and correct, and signed it.

Vasavan's account was that he was escorted to Inspector Teo's room in handcuffs. The Inspector arrived an hour or so later, whereupon the cuffs were removed and the escorts left. Inspector Teo handed him a sheet of paper. Vasavan said he could not read what was on it because he did not have his glasses. He did not ask Inspector Teo what was written on the paper. He was asked to sign it by Inspector Teo, who said: "This is a formality". Vasavan signed. He did so in obedience to the request of a police officer.

Inspector Teo then started recording a statement, without administering the caution prescribed by s. 121(6). Vasavan had never heard the words of the caution before they were read out to him by his Counsel in Court. Inspector Teo asked Vasavan questions, which Vasavan answered. Some of his answers were short; others were elaborate. Occasionally Inspector Teo would say: "Rose said this. Is it true?", and Vasavan would answer yes or no. From time-to-time, Inspector Teo would look into his drawer, as if consulting a statement taken from Rose.

When the statement was concluded, Inspector Teo asked Vasavan to sign it on each page, and at the end. It was not read back to him before he signed it, and he did not ask for this to be done. He signed the statement because he was asked to do so by Inspector Teo, a police officer, whom he trusted.

Vasavan was asked by his Counsel to read the statement in the witness box, and to say whether it contained what he told Inspector Teo. He said that it did so in part, but not entirely.

There was no suggestion that the s. 121(6) statement was the result of any threat, inducement or promise. The issues were (i) whether the formalities prescribed by s. 121(6) were observed and (ii) whether the statement was read back to Vasavan, so that he was satisfied that its contents were accurate, and not a concoction, in material respects, of Inspector Teo.

We were satisfied that Vasavan is near-sighted and that he is unable to read, or cannot read adequately, without his glasses. We were also satisfied that he was not in possession of his glasses at the time the statement was recorded. However, there were aspects of Vasavan's evidence concerning the recording of the s. 121(6) statement which we found ourselves unable to accept. He is articulate and intelligent. He knew at the time the statement was recorded, indeed had known from well before he was taken to the CID the night before, that Rose was in custody, "helping the police with their enquiries" into the murder of Tan. He felt, even before the recording of the s. 121(6) statement began, that he was an accused person. Our assessment of Vasavan's intellect left us in no doubt that he is a person who would have appreciated the significance of being asked to sign a statement taken from him in the course of police enquiries into Tan's death, and it was inconceivable to us that Vasavan, not being in possession of his glasses, would have signed such a statement without having asked for it to be read back to him, and without it having in fact been read back to him.

Vasavan said that he signed the statement because he trusted Inspector Teo, but if he was to be believed, there was no basis for that trust. He had first encountered Inspector Teo some 8 hours earlier, and from the first moment Inspector Teo had been, according to Vasavan, aggressive and intimidating. Later, in Inspector Teo's room, he had allegedly been hit on the forehead by Inspector Teo. We concluded that Vasavan's assertion that he had signed the statement without it being read back to him because he trusted Inspector Teo, to be wholly unbelievable.

It was submitted to us that the statement could not have been read back to Vasavan and explained in the space of 5 minutes, as indicated by Inspector Teo at the foot of the statement. As to that submission we found, in the first place that no explanation would have been necessary since it was evident to us that Vasavan speaks excellent English; and secondly, that Inspector Teo could well have been imprecise in recording the time taken to read back the statement. Had he deliberately set out to fake the record at the foot of the statement he would, in our view, have contrived to do so more efficiently.

Vasavan admitted that he was handed two sheets of paper, containing the charge and the warning, and that both were signed by him. He said that he did not read them because he did not have his glasses. Having taken the two sheets of paper back with him to the lock-up after the statement was concluded, the documents were put away in his locker. Vasavan said that he did not bother to have them read to him by anyone, which he conceded would have been possible, between 26 October and 2 November. Bearing our assessment of Vasavan in mind, we regarded that evidence as unreal, and it added to the general incredibility of Vasavan's account of the recording of the s. 121(6) statement.

On Vasavan's own admission, Inspector Teo wrote out the statement immediately Vasavan completed each sentence. That, in our view, made it even less likely that anything Inspector Teo wrote down was the product of his own imagination.

We were urged by Counsel for Vasavan to exclude the s. 121(6) statement on the grounds that, in recording the fact that the warning was read and explained, Inspector Teo had written: "The interpreter and I also signed" when it was no part of the evidence that an interpreter was ever present. That, submitted Counsel, indicated that Inspector Teo "was in fact referring to another document" and that he "failed to realise that he had slipped up". This was, said Counsel, the clearest indication that Inspector Teo's evidence was "a tangled web of lies."

We were not prepared to accede to this submission. We find that Inspector Teo made a mistake while writing out a formal paragraph on the sheet of paper on which the warning was contained. No interpreter was present because none was needed. It is probable that the Inspector copied out the form of words from another statement which had involved the services of an interpreter, perhaps even the statement of Rose, which is likely to have been to hand. That did not affect our minds as to Inspector Teo's credit.

For the reasons stated, we accepted Inspector Teo's evidence as to the recording of the s. 121(6) statement, and admitted it into evidence.

(iii) The s. 121 (5) statement.

Inspector Teo told us that at 10.00 a.m. on 1 November, he began to record another statement from Vasavan. The statement ran to about 12 pages, and the recording of it occupied the better part of two days, on each of which the recording session was stopped for lunch, at which point so much of the statement as had by then been typed was read back to Vasavan, who signed each page, in acknowledgement of its correctness. The same procedure was followed after each afternoon session.

Vasavan's version of the recording of the s. 121(5) statement was different in material respects. After each page was typed out, he said, Inspector Teo would take the typed sheet out of the roller, point to a spot and ask Vasavan to sign. The contents of the sheet was not read out to him, although he was still not in possession of his glasses.

Since there was no allegation that the statement was made as a consequence of a threat, promise or inducement, the sole issue we were called upon to decide was whether the statement was faithfully recorded, and then read back to Vasavan so that in signing it, as he did, he acknowledged that it was his statement.

We considered that there was some substance in the submission that had Inspector Teo read back each page to Vasavan, the Inspector would have intialled or signed it, as had happened in the case of the s. 121 (6) statement. However, this was not done. Furthermore, an analysis of the times at which each segment of the statement was completed, and the time Vasavan was returned to the lock-up, as recorded in the lock-up diary, rendered it unlikely that each segment of the statement was read back to him as it was completed.

We concluded that Inspector Teo had not been as punctilious in the recording of this statement as he had been in the case of the s. 121(6) statement. Accordingly, we declined, in our discretion, to admit the s. 121(5) statement into evidence.

II Phan

Phan is now 47 years old, and is a native of Nongkhai Province in the Isan region of Northern Thailand, where a dialect is spoken. Before he came to Singapore to work, Phan was a farmer and a fisherman and had never left Nongkhai. He lived in an un-numbered wooden hut with his wife and two children. They had no television and no radio. Phan never went to school. He cannot read or write Thai; he cannot even tell the time.

Madam Saripon Tapin, a Court-appointed interpreter who interpreted the proceedings to both Phan and Wan in the dock during the hearing, was called as a witness for Phan.

Madam Saripon has acted as a Thai interpreter for the CID, police divisions and various government departments for seven or eight years. She is also a teacher of the Thai language. She obtained the equivalent of "A" levels in Thailand, studied at the Christian Bible College in Singapore for 3 years, took the LCC Secretarial course and studied liberal arts in the United States.

Madam Saripon told us that she first came into contact with Phan in 1987, when she was asked to act as his interpreter by Phan's Counsel, Mr Lim Choon Hong, while Phan was in remand at Changi Prison. She spent a total of 7 1/2 hours interpreting for Mr Lim between August 1987 and July 1989, apart from interpreting the proceedings to Phan and Wan for the first 17 days of the hearing before us, at which point she was called as a witness.

Madam Saripon's evidence was that Phan speaks very simple central Thai, which he sometimes mixes with the Isan dialect. His knowledge of central Thai "is like that of a child". On occasion, in order to make herself understood to Phan, she also used words of the Isan dialect. This dialect is very different from central Thai.

Madam Saripon said that Phan had understood the charge when she read it to him in Court. It had not been necessary to explain it to him because she had read and explained it to him on a number of occasions in prison, and in the subordinate Court. She had heard Phan in the witness box, and the interpreter who had interpreted for him. Both of them had used central Thai mixed with the Isan dialect, and some of the Isan words used had been crucial to the interpretation.

Phan's oral statement, to which reference is made shortly, was made to a P.C. Lee Koon Teik (P.C. Lee) who acted as a Thai interpreter for Inspector Teo Madam Saripon told us that she had occasion to meet P.C. Lee in the course of her work. She had spoken in Thai to P.C. Lee, and had heard him speak Thai. P.C. Lee spoke a bizzare central Thai, fixed with Hokkien. That would have made it hard for Phan to understand him, and for him to understand Phan. In Madam Saripon's opinion, P.C. Lee would have had difficulty in making himself understood by Phan, save in the case of simple questions such as "How are you?" or "Where are you going?". She conceded that Phan would have understood P.C. Lee if he had been asked "Where were you yesterday?" or "Who were you with?". Phan would not have understood the word "murder", but he would have understood the central Thai word for "killing".

It was of the highest importance for us to bear this background in mind when considering the evidence relating to the statements which Phan was alleged to have made.

(i) The oral statement.

Inspector Teo's evidence was that he commenced questioning Phan at about 11.35 a.m. on 26 October, using P.C. Lee as interpretator Phan was told that he was suspected of having committed murder. Phan was co-operative and made a statement. Inspector Teo made a record of it in his field book. P.C. Lee read back the record and explained it to Phan.

P.C. Lee has been in the force for 23 years. He has been married to a Thai woman for 15 years, and began to be used as a Thai Interpreter about 6 years ago. He has not passed any examinations in the Thai language and is not a certificated Thai Interpreter. P.C. Lee has never been used as an interpreter for the purposes of recording a statement under s. 121(6).

The evidence for the prosecution was that P.C. Lee put questions to Phan on Inspector Teo's instructions. He said to Phan: "What you tell me I'll tell the Inspector." They spoke in "normal Thai", and understood each other. P.C. Lee did not agree that a Thai from Nongkhai province cannot understand the Thai language as spoken in Bangkok, which P.C. Lee used, and which was referred to during the trial as "central Thai".

P. C Lee denied that he said to Phan: "You better confess"; and: "If you confess, Inspector Teo will ensure a minimum punishment and your early return to Thailand." It was not true that Inspector Teo slapped Phan in his presence. Phan had been very co-operative. The alleged oral statement had been made by Phan in response to P.C. Lee having asked him what he knew about the murder. For "murder" P.C. Lee had used the word "kill".

Phan's evidence was that on the morning of 26 October he was taken to Inspector Teo's room. He was handcuffed by the wrists, with his hands behind his back. It was painful. He did not understand what P.C. Lee said to him because he spoke "in different words", using a "high vocabulary". P.C. Lee used a Thai which was very different from the Thai which Phan usually spoke. P.C. Lee said something about "murder", but Phan did not understand it all.

Phan said that Inspector Teo spoke to him, through P.C. Lee, in a threatening way. Phan was told if he did not speak the truth he would be hit and punched. P.C. Lee hit him (later retracted) and Inspector Teo slapped him across the face. He was told to confess, but he declined. P.C. Lee said that if Phan confessed his "penalty would be reduced to the least". Neither Inspector Teo nor P.C. Lee wrote anything down.

In answer to a question from the Court, Phan said that throughout the period he was in Inspector Teo's room on the morning of 26 October, he said nothing. Later he said that he could not remember whether he said anything, and could not remember whether Inspector Teo or P.C. Lee was writing things down. What was beyond doubt, however, was that after the interview Phan went with the police to a worksite at Lorong Chuan where his acquaintance, Wan, was arrested. He could not remember whether he led the police to Lorong Chuan, or whether they took him there.

Although it was Madam Saripon's evidence that Phan has some difficulty understanding central Thai, we were not prepared to believe that Phan was unable to comprehend everything P.C. Lee said to him on the morning of 26 October. We found that Phan was asked by P.C. Lee whether he knew anything about the murder, and that P.C. Lee used the central Thai word for "kill" in asking this question, a word which Madam Saripon said Phan would have understood, and which we found that he did understand. It is significant that, when Phan was first apprehended at his worksite on the morning of 26 October, an employee on the site, Lim Hang Chye, who was asked to explain to Phan in Thai that the police had come to investigate a murder, did so by using the word "killing". Lim said that Phan generally understood his Thai.

We concluded that it was as a result of what Phan said in response to P.C. Lee that a CID party proceeded to the Lorong Chuan site and arrested Wan. We did not believe that Phan was slapped by Inspector Teo, or that the answers he gave as a result of P.C. Lee's questions were the result of threats or inducements.

We admitted Phan's oral statement into evidence.

(ii) The s. 121(6) statement.

The evidence of the prosecution was that this statement was recorded by Inspector Teo with the assistance of Lim Yew Teck alias Prakorb Thipamom ("Prakorb") as interpreter. The formalities, including the interpretation and explanation of the statement, the recording of it, and the concluding formalities lasted an hour and ten minutes.

Prakorb is a freelance Thai interpreter. His services have been used in the Courts of Singapore for some 16 years. He spoke to Phan in what he (Prakorb) first called "royal Thai" which, he said, is "the market language" used in Thailand for everyday conversation, irrespective of dialects which may be spoken in individual provinces. Prakorb told us that the charge was read right through by Inspector Teo, and that he interpreted and explained it to Phan, who said he understood it. Then the warning was interpreted and explained by Prakorb by way of saying to Phan "What facts you have you should state", or words to that effect.

When it came to recording the statement, Prakorb interpreted what Phan said to Inspector Teo, and the Inspector "typed it out immediately". (In fact the statement was handwritten).

Prakorb sought to give us the impression that the exercise of recording the s. 121(6) statement from Phan was totally straightforward. He said that he had not the slightest doubt that Phan had understood him, and vice versa. He was dismissive of the suggestion of Phan's Counsel that an illiterate who came from Nongkhai and spoke the Isan dialect might have difficulty understanding central, or what Prakorb called "royal", Thai.

We did not share Prakorb's confidence. The speed with which the exercise was completed did nothing to reduce our anxiety. We watched Phan closely while he was in the witness box. The interpreter (not Madam Saripon, to whom Phan was accustomed) spoke to him substantially in central Thai, with an occasional word in the Isan dialect. We saw that, on many occasions, questions had to be repeated and explained, and that Phan often displayed what we took to be a sense of bewilderment as to the questions asked of him in the witness box.

We were obliged to project ourselves back to the date of Phan's arrest, when he was confronted by Inspector Teo and Prakorb. We asked ourselves whether it was likely that Phan, a peasant hearing the warning (which contains a fair smattering of "legalese") read through once to him in a dialect he did not readily understand, was likely to have comprehended it, when the only explanation offered was a perfunctory: "What facts you have you should state". We concluded that there was a real danger that the warning was not explained to Phan adequately, and we accordingly declined to admit the s. 121(6) statement into evidence.

(iii) The s. 121(5) statement

P.C. Lee was again used as the Thai interpreter for the purposes of recording this statement from Phan. It was alleged to have been recorded between 9.30 a.m. and 5 p.m. on 1 November, with a break of 45 minutes for lunch. According to P.C. Lee, under cross-examination, every sentence and phrase contained in the statement came from Phan, subject to paraphrasing by Inspector Teo, who typed the statement out as P.C. Lee interpreted. According to P.C. Lee, Phan understood the statement (which ran to a number of closely typed pages) when it was read back to him. Being illiterate, he applied his thumbprint to the foot of each page.

Our misgivings with regard to the s. 121(6) statement applied with even greater force to the recording of the s. 121(5) statement, given the additional factor of P.C. Lee's limitations as an interpreter, when it came to dealing with an accused person whose natural language was a remote Thai dialect with which P.C. Lee was totally unfamiliar. We were unable to accept that the morning and afternoon segments of the statement were read back to Phan before he placed his thumbprints on them, having regard to the very short time that elapsed between the completion of each segment and the return of Phan to the lock-up.

Even if Phan made some contribution to the contents of the statement, there was, in our minds, a very real danger that material may have found its way into the statement for which Phan was not the source. We declined, in our discretion, to let in the s. 121(5) statement.

III. Wan

(i) The oral statement

The case for the prosecution was that Wan made an oral statement while he was being interviewed by Inspector Teo between 2.55 p.m. and 3.35 p.m. on 26 October. Inspector Teo made a record of the statement in his field book, and had it read back to Wan by P.C. Lee, who acted as interpreter.

Wan's evidence was that, following his arrest at his worksite at Lorong Chuan on 26 October, he was taken to a police minibus in which he saw Phan. As he was about to take his seat in the bus he was slapped across the face and hit in the stomach by a Chinese officer, whom he was unable to identify. This happened when the officer pointed Phan out to him, as if to ask if he knew Phan, and he (Wan) shook his head.

On arrival at the CID, Wan was taken to Inspector Teo's office and questioned by the Inspector, through P.C. Lee. He said he found P.C. Lee difficult to follow, although he understood his words. Phan was brought to the door on a number of occasions, and this frightened Wan. He was shouted at if he was unable to answer a question, and P.C. Lee would bang the table. Nothing was written down by Inspector Teo and nothing was read back to him.

We did not believe that Wan was assaulted in the mini-bus. Although this assertion was ostensibly corrobated by Phan, we disbelieved the latter as well. We did not accept that Wan was unable to understand P.C. Lee. We concluded that Wan is in an altogether different proposition from Phan. He is younger, educated up to a point, literate and intelligent. We believed that Wan made a voluntary oral statement to Inspector Teo through P. C. Lee between 2.55 p.m. and 3.35 p.m. on 26 October, and we admitted it into evidence

(ii) The s. 121(6) statement

The prosecution claimed that this statement was recorded from Wan between 7.45 p.m. and 8.55 p.m. on 26 October. Prakorb acted as interpreter, and Inspector Teo wrote down the statement after the formalities prescribed by s. 121 (6) had been followed.

Wan's evidence was that he was required to remove his tee-shirt before being handcuffed to the back of a chair in Inspector Teo's air-conditioned room. Prakorb introduced himself, saying that he came from the Thai embassy to be Wan's interpreter, and to help him. Wan conceded that the charge and the warning were read to him. He did not quite understand either, and told Prakorb that he did not understand the warning, but Prakorb said words to the affect "If You don't sign, the whole thing cannot be finished". He signed below the warning because Prakorb told him that it would be alright, and he believed Prakorb, since he had told Wan that he was from the Thai embassy.

There followed the recording of the statement by Inspector Teo, through Prakorb. Wan agreed that the statement was read back and signed by him, although he did not agree with everything it contained, and did not understand parts of it. He signed it because Prakorb said: "It's alright".

Wan was unimpressive under cross-examination, and we disbelieved his evidence. We were entirely satisfied that he understood the charge and the warning, the latter having been explained to him; that no threats or inducement were made or held out to him; that he was not assaulted at any time, and that the statement he voluntarily made was adequately interpreted, and duly recorded by Inspector Teo. We admitted it into evidence.

(iii) The s. 121(5) statement

The prosecution claimed that a closely typed six-page statement from Wan was recorded by Inspector Teo with the assistance of P.C. Lee as interpreter, between the hours of 5.30 p.m. and 6.45 p.m. on 5 November, and 9.25 a.m. and 12.30 p.m. on 6 November.

Wan's recollection of the recording of the s. 121(5) statement was that P.C. Lee told him that he should tell the same story as Phan, which would result in the "punishment being less". Inspector Teo typed as Wan spoke, and when the Inspector could go no further, he would ask a question through P.C. Lee. When the statement was read back to Wan, he realised that there was quite a lot in the statement which was not given by him. However, P.C. Lee told him that he could not change anything. If he wanted to say anything more he could talk to his lawyer. P.C. Lee said that the Singapore and Thai police were the same, and by this Wan understood him to mean that "severe punishment could be reduced" if he signed the statement.

Although we had serious reservations as to the truth of Wan's allegations against P.C. Lee, we erred on the side of caution, and in the exercise of our discretion, declined to let in the s. 121(5) statement recorded from Wan.

The Resumed Trial

Upon the resumption of the main trial, Inspector Teo gave evidence with regard to the statements which we had decided, at the conclusion of the voire-dire, were admissible in evidence.

Vasavan

In so far as Vasavan's oral statement was concerned, it was Inspector Teo's evidence that at about 12.40 a.m. on 26 October, 1984, Vasavan admitted that he had conspired with Rose to kill Tan, as a result (*inter alia*) of Tan having seduced Vasavan's wife. Vasavan said that he had purchased some nylon rope on 24 October and had taken three unnamed Thais to Tan's home that night. They were let in by Rose, and they waited for Tan to return, following which the Thais had set upon Tan, strangled him to death with the rope and then fled. He had paid each of them $1,000.

Vasavan's s. 121(6) statement was read to us. In a nutshell, Vasavan recounted the circumstances which led to Rose and him deciding, in early October 1984, to employ Thai workmen to kill Tan. He proceeded to recruit Phan, and instructed Phan to bring along two more Thais.

On 24 October, Vasavan bought a length of nylon rope, and plans for the murder were finalised. At about 8.00 p.m. he took Phan and the two other Thais to Tan's flat, where they were let in by Rose, who thereupon left. Upon Tan's return to the flat at about 11.00 p.m., first one of the Thais, and then the other two, jumped on him in the study. Vasavan had earlier given the rope to Phan. Vasavan remained outside the study. In due course, the Thais emerged from the study, one of them saying that "the job has been done". Vasavan let the Thais out of the flat with a key supplied to him by Rose, and on the way down in the lift paid each of the Thais $1,000.

Phan

Inspector Teo told us that at about 11.50 a.m. on 26 October, that is to say about 15 minutes after questioning began, Phan admitted that he had murdered Tan with "Augustine" (Vasavan), Wan and "Ah Poo". Vasavan had hired them for "the killing" and he, Phan, had been paid $1,000. He had been taken to the house (where the offence was committed) by Vasavan and he, Vasavan, and the two other Thais had waited for Tan to return. When he did so they set upon him, strangled him with a nylon rope and then fled.

Wan

Insofar as Wan's oral statement was concerned, Inspector Teo's evidence was that at about 3.35 p.m. on 26 October, Wan stated that on 24 October he, Vasavan, Ah Poo and Phan had waited at Tan's flat, and had set upon him when he returned home, strangling him with a nylon rope. The relevant portion of Wan's s. 121(6) statement was in the following terms:

> ... The 3 of us then rushed to the study room and saw "Ah Poo" grabbing the deceased by the neck. "Phan" then grabbed the waist of deceased. "Augustine" grabbed the legs of the deceased. I also followed suit by grabbing the legs of deceased. "Augustine" then went to switch off the light of the study room and closed the door. The deceased then fell when I grabbed his leg. "Phan" then took a rope and tied the deceased neck. "Ah Poo" also shouted to me not to grab the legs of deceased but to help "Phan" with the rope. I then released the legs and helped "Phan" with the rope. At that instant, "Augustine" and "Ah Poo" also joined to pull the rope which was tied to deceased neck. We pulled the rope till the deceased lost consciousness.

At the close of the case for the prosecution, Counsel for Phan submitted that his client ought not to be called on to enter upon his defence. He argued that the only material before the Court which was adverse to Phan were the statements of Vasavan and Wan. However, those statements were not evidence against Phan since, by virtue of s. 30 of the Evidence Act, they could only be "taken into consideration".

Counsel for Phan submitted that there was no evidence which was capable of being supported by the confessions of Vasavan and Wan. Phan's own oral statement, he said, did not amount to such evidence, notwithstanding the fact that it had been admitted. It had, after all, been made to P.C. Lee, whose knowledge of Thai was limited and who was not familiar with the Isan dialect at all. The statement had been interpreted into English by P.C. Lee for the benefit of Inspector Teo, but the words which Inspector Lee had written down in his field book were not Phan's words. The statement so reduced to writing, had not been read back to Phan, and had not been acknowledged as correct by him, by means of his thumb print or otherwise.

Furthermore, and this was a regurgitation of an argument we had heard (and rejected) in the voire dire in relation to the admissibility of Phan's oral statement, that the statement had not been made "in the hearing of" a police officer of or above the rank of sergeant, so as to render it admissible by reason of s. 121(5) of the Criminal Procedure Code, because Inspector Teo in whose physical presence the statement was made could not understand Thai. The words in "the hearing of", urged Counsel, required not only that an officer of the rank required should have heard the statement, but also that he should have understood it at first hand, without the aid of an interpreter. For this proposition, Counsel relied on the Malaysian case of *PP v. Tan Keo Hock* [1982] 2 MLJ 190.

That case turned on the interpretation of reg. 21 of the Essential Security Cases (Amendment) Regulations 1975 of Malaysia which provides, when read with s. 75 of the Malaysian Internal Security Act, that for a statement to be admissible it must be made in the hearing of" a police officer not below the rank of Inspector. George J, declined to admit a statement made by the accused in a mixture of Hokkien and Mandarin, in the presence of an ASP whose Hokkien was poor and who, in effect, used an interpreter. His Lordship said:

> In the instant case the prosecution's contention that the alleged statement made by the accused to PW5 is admissible turns on whether it was made in the hearing of PW1 who was a police officer not below the rank of inspector, PW5 being below the rank of inspector. To my mind the import of the phrase "in the hearing of" is that not only did the officer hear what was said but understood what was said and as a result of which could vouch for what was said.
>
> The evidence is that the interrogation of the accused was in the Hokkien dialect as well as in Mandarin. ASP Lee's Hokkien was so inadequate that he had to use PW5, a Detective Corporal to conduct the interrogation. ASP Lee said that although he could not speak in Hokkien he understood what was said in Hokkien. During the interrogation ASP Lee did not talk to the accused and the accused did not talk to him. In the course of the interrogation when ASP Lee wanted clarification he communicated with the accused through PW5.
>
> Clearly ASP Lee could not be relied upon to vouch for what was stated by the accused in the course of the interrogation. At best he got the gist of what the accused was saying. Accordingly, in my view, it cannot be said that the accused made a statement in the hearing of ASP Lee within the meaning of the phrase "in the hearing of" as used in reg. 21(1)(a). In the event I concluded that whatever it was that was stated by the accused to PW5, the corporal, was inadmissible.

We considered with care the submissions of Counsel for Phan.

As to the first of those submissions, it is well settled, and we accepted, that the confession of an accused person in a joint trial is not evidence against a co-accused. Thus, such a confession cannot alone support the conviction of a co-accused; it can only be taken into consideration "as bearing upon the truth or sufficiency" of other evidence against the co-accused - *R v. Chandra* 25 WR Cr. 43. Or, put in another way, the confession of the accused "can be used only in support of other evidence and cannot be made the foundation of a conviction" - *Bhuboni v. R,* 63 CWN 609.

We therefore turned to considering whether Phan's oral statement, which we had admitted, amounted to evidence which, if believed, was capable alone of supporting a conviction. In our view it was so capable. It amounted to an unequivocal admission on the part of Phan that he, Vasavan, Wan and Ah Poo, had attacked and strangled Tan to death, for which act he, Phan, had been paid a sum of $1000 by Vasavan. When broken down, Phan's oral statement consisted of a number of simple constituent parts which, in our judgment, he was capable of conveying, and did convey, to P.C. Lee, and which P.C. Lee was capable of understanding, did understand, and which he interpreted to Inspector Teo.

We were unable to accept, with respect, the reasoning of George J., in *Tan Kee Hock's* case with regard to the admissibility of Phan's oral statement, or as affecting the weight we should attach to it. If that reasoning were to be applied to statements made under s. 121(5) of the Criminal Procedure Code, it would result in no statement made by a person charged with an offence being admissible, notwithstanding that it was made in the presence of a police officer of or above the rank of sergeant, where the statement was so made through an interpreter. That result would, in our view, place an obstacle in the way of police investigations which cannot have been intended by Parliament when it passed s. 121(5) into law. This country has been historically, and is, multi-racial and multi-lingual. The interpretation of reports and statements into English during police inquiries has been part and parcel of police investigative procedure for decades, just as has the interpretation into English of the evidence of non-English speaking witnesses in proceedings before our Courts.

Thus, in our view, we were entitled under s. 121(5) to admit, and give due consideration to, the oral statement made by Phan through an interpreter, in the presence of, and heard first-hand by, an officer of the required rank, so long as we were satisfied as to the credibility and competence of the interpreter. We were so satisfied as to the credibility of P.C. Lee, and his competence to the extent of understanding Phan's oral statement and conveying it to Inspector Teo.

Having so concluded, we were obliged to consider, applying the test in *Haw Tua Tau v. PP* [1981] 2 MLJ 49, whether Phan's oral statement amounted to evidence which, were we to accept it as accurate, established each essential element in the offence with which Phan stood charged.

The test was, in our view, passed. We were entitled to take into consideration the statements of Vasavan and Wan as bearing upon the truth of, or lending assurance to, Phan's oral statement. We considered the statements of Vasavan and Wan in that character, and not as evidence against Phan, and we concluded that the statements of both Vasavan and Wan lent support and assurance to Phan's oral statement.

Accordingly, we rejected the submission of Counsel for Phan, and called upon Phan to make his defence. No submission having been made on behalf of Vasavan and Wan, and we having found that a case had been made out against them, if unrebutted would warrant their conviction, they too were called upon to enter upon their respective defences.

Vasavan elected to give evidence. To the extent that it was relevant to the defences raised, it was as follows.

Early in 1981, he was sitting at home with his family. He was looking through a photograph album, and upon seeing a photograph of Tan (known in the family as "Frankie") remarked to Amnoi: "Isn't Frankie a handsome guy?", whereupon Amnoi replied: "He is not handsome. He takes off his spectacles when I sleep with him and he is quite ugly". When Vasavan heard this slip out, he could not believe it. Amnoi revealed that she had been sleeping with Tan for some 10 years.

Amnoi's revelation made Vasavan feel as though ants were entering his brain. He did not know what to do. He was "shocked", "flabbergasted" and "messed up". He felt that he had been made use of and deceived.

On the day after the revelation, he went to work, but he did not know what work he did. He was talking to himself and when he came home that evening it was even worse. He looked at the bed in which he and Amnoi slept and imagined things. He tore up his wedding photograph.

Vasavan described his life in the days following the disclosure of the affair as a living hell. Every time he entered the bedroom, he imagined Tan making love to his wife. Vasavan's family life disintegrated. He found it difficult to converse with his wife and his daughter, Veronica, quarelled with his wife often, and became suspicious of her. He found fault with her easily, slapped her occasionally, threw things, kicked the furniture, slammed doors, punched the wall and cupboards, sometimes behaving in this way even when he was alone. The most difficult times were at night. He could not sleep and would go for walks for hours, and sit at bus-stops, returning home between 2 a.m. and 3 a.m., still finding it at difficult to sleep.

A month after he discovered the affair, he resigned from his job with his brother-in-law because he feared working in high buildings. On two occasions at least, he contemplated suicide and sat on the ledge of his kitchen window. He did not jump because his daughter's face appeared before him. He was unable to make love to Amnoi.

After 6 or 7 months, Vasavan calmed down, although his troubled feeling continued. He had not been to church for some 17 years, but began attending again, up to 4 times a week. In due course, he began taking Amnoi with him. The church was a considerable source of support and comfort.

On night early in 1984 he received a telephone call from Rose. She asked to see him and they met. Vasavan was shocked to see the state Rose was in. She told him that Tan had become very close to Theresa, whom Vasavan had once seen in his adoptive mother's home. Rose asked Vasavan if he could help her to break up the relationship with the aid of black magic. Vasavan said that he was a Christian and did not indulge in black magic. In any event, he told Rose black magic would not work. In the course of their conversation that night, Rose told Vasavan that she had contacted "some secret society people" and that they were going to kill Tan for $42,000. Vasavan exclaimed: "Rose, you are mad, you had better forget the whole idea!". Rose promised not to go ahead with her plan.

After this meeting with Rose, she began to telephone Vasavan regularly. During her telephone conversation with him, Rose would sometimes refer to Tan's affair with Amnoi. Whenever she did that, Vasavan "felt a disturbance" in him. He would get a funny feeling in his head. It was as though Rose was "scratching old wounds". Vasavan's relationship with his family deteriorated again. His attendances at church fell off, and he started going for walks in the middle of the night again. It was only at work that his troubled thoughts left him, because he was kept very busy.

In one of his telephone conversations with Rose, she told him that she had been to see a Chinese medium with a view to breaking up the relationship between Tan and Theresa. She had paid the medium $900, with no result.

From about February or Mach 1984, virtually every time Rose spoke to Vasavan, she pleaded with him to try and get someone to break up the relationship between Tan and Theresa. After these entreaties had continued for two or three weeks, Vasavan, in order to calm Rose, asked her to bring him a photograph of Tan. He told her that he would see what he could do. This was not the truth and when Rose duly gave Vasavan a photograph of Tan, he threw it away.

After two of three weeks, Rose brought another photograph of Tan. Altogether she gave six photograph of Tan to Vasavan. He threw them all away. On the seventh occasion, Rose gave Vasavan a photograph of Theresa's child by Tan, saying that "maybe the son's photograph will work". This was in July/August 1984.Vasavan handed the photograph back to Rose and said: "It is not going to work, it will never work". This was the last occasion on which Rose approached Vasavan about black magic.

In answer to his Counsel, Vasavan said that he never once suggested to Rose that black magic be used to kill Tan and that Rose never asked him to use black magic for this purpose.

During the first week of October 1984, Rose informed Vasavan that she had a big row with Tan, during the course of which the affair between Tan and Amnoi was referred to. The reference to this affair upset Vasavan. He thought he would never be allowed to forget it. He put the telephone down, picked up a flower pot which was next to the telephone and hurled in into the kitchen.

He telephoned Tan the next morning, intending to tell him to stop talking about Amnoi's affair with him ("the October telephone conversation"). This was the first time that Vasavan had spoken to Tan since 1981. When Vasavan identified himself, Tan said; "You fucking crap, what do you want?". Vasavan said: "You have been messing around with my life, and you are not even repentant", to which Tan answered: "Well, if luck is to fuck, who is to check?" Vasavan put the phone down. He felt "horrible", "messed up" and "lousy". He knew that if he were to confront Tan, he would be "clobbered". He wanted to assault Tan, to "whack" him, but Tan was too strong.

The next day, at his work site, Vasavan was thinking of his conversation with Tan. He saw Phan working on his own; he had known Phan since 1981, when Phan had come to work in Singapore from Thailand. He had befriended Phan, who had visited his home at Chinese New Year. They had become close.

He approached Phan that morning and told Phan that he wanted a Chinese man beaten up because the man had molested his daughter. Phan asked how big the man was and when Vasavan replied that he was as big as their project manager, Phan said; "That's big - one person cannot beat him up, must take two or three persons". Vasavan asked Phan if he had two or three friends and Phan replied that he would try and find two or three persons. Vasavan gave Phan $100, saying: "If you can find two or three men, take money and buy them beer".

That night when Rose telephoned, Vasavan told her: "I am going to whack Frankie". Rose said: "He is very strong", whereupon Vasavan told her that he had spoken to one of his Thai workers who was going to get another two men to help him beat up Tan.

Two days later, Phan introduced Vasavan to two Thais, one of whom was Wan. Vasavan asked Phan: "Have you talked to these two persons?", and Phan replied: "Spoke already". Vasavan asked whether these two men were going to beat up the Chinese man, and Phan replied in the affirmative. All of them went to Laguna Park on a reconnaissance that same night. Vasavan showed the three Thais the block in which Tan lived, and said that he wanted Tan beaten up outside the block. Phan said; "There is a lot of light here, the people here can recognise us". Vasavan told Phan that the intended victim lived on the 24th floor and asked: "Do you want to go and beat him up in his house?" and Phan said: "Okay".

The next day, Rose telephone Vasavan and he told her that Tan was to be beaten up in the flat, and that he needed a set of keys. Rose said that she would get duplicate keys made. Vasavan asked her whether they should give the Thais some money and Rose said that they should, although no amount was suggested by either of them. A few days later, Rose gave Vasavan a set of keys, and two or three days later, a sum of $4,500.

At about 11 a.m. on 24 October, Vasavan went to Sungei Road to buy some rope because he wanted Tan "tied up, immobilised, before they whack him". If Tan was not tied up, he could have taken on the three Thais. Vasavan did not know how Tan was to be tied up. It was just a thought. He asked for $10 worth of rope because he wanted it to be long enough.

At about 7 p.m. that night he went to the coffee-shop at Toa Payoh which Phan was in the habit of patronising. He took the rope with him in a plastic bag. Phan and the two other Thais were there and he said to them, "I brought a rope. In a little while we will go to the Chinese man's house to tie up the Chinese man and beat him up". Later they went to Laguna Park in a taxi.

Vasavan went up to Tan's flat alone, having telephoned Rose from a bus-stop downstairs. Rose was waiting for him outside the flat. The doors to the flat were open. Vasavan told Rose: "Don't go back until after 1a.m." Vasavan entered the flat and left the plastic bag with the rope in it on a table in the hall. He then went downstairs, brought the Thais back to the flat and showed them round it. They then sat in one of the bedrooms, that of Rose, and waited. The flat was in darkness.

Tan returned just after 11 p.m. As soon as they heard the key turn in the lock, Ah Poo ran into a room which contained Tan's exercising equipment. A light came on in Tan's bedroom and then a silhouette was seen of someone entering the exercise room. The light in that room was turned on and seconds later, Vasavan heard Ah Poo scream. The other two Thais ran, into the exercise room. The door was closed and Vasavan could see the light go off from under the door. He heard thudding sounds, and the sound of dumbbells rolling on floor. Vasavan's hands and legs were shaking. He heard someone in the room said in Thai, "Where is the Indian man?" meaning him, and he walked out to the kitchen intending to unlock the doors leading into the corridor outside. There was humming sound in his head as if his ears were blocked.

When Vasavan returned to the corridor leading to the bedrooms, he saw Wan standing stock still, staring into space. Two feet away from him stood Phan. Nobody said anything and there was no sound. Wan's shirt had blood on it. Vasavan walked to the exercise room. The door was slightly ajar and the light was still off. He turned it on and off and said; "Enough, return". He did not see anything in the exercise room and he did not enter it. Ah Poo emerged. Vasavan spoke into the darkness of the exercise room, addressing Tan, and saying: "You son of a bitch, you report this and I will tell about the affair with your secretary".

All of them then left the flat. Vasavan saw that Ah Poo was bleeding profusely from the centre of his forehead and that his shirt was wet with blood. In the lift, on the way down, he gave each of the Thais $1,000. They were surprised. He and Ah Poo took a taxi to Toa Payoh where they disembarked. The other two Thais went off in another direction. At Toa Payoh, Vasavan dropped the keys to Tan's flat through the grating of a drain. He then went home.

Essentially, Vasavan's defence was that he had never intended to cause or procure Tan's death. His sole intention had been that Tan should be beaten up. He had purchased the rope on the spur of the moment. The idea was that Tan's hands and feet would be tied so as to facilitate the assault. He had not been present in the room in which the assault was carried out. Phan had agreed to participate in the assault out of fondness for Vasavan, and not for reward. The payment of $1,000 was gratuitous - Phan had neither asked for nor expected it. Vasavan's feelings towards Tan had been of utter disgust and frustration, made worse following the October telephone conversation, but not hatred. At no time had he intended Tan to be killed. Tan was to be "whacked" until he was hurt, although he never gave any thought to the degree of punishment that was to be meted out. Nothing was said by him to the Thais as to the role each of them was to play. However, he had part in the assault, not because Tan would recognise him, but because he was afraid of Tan, who was a bodybuilding enthusiast, and an exponent of karate. Thus it was that after the assault was over, he shouted into the darkness of the room in which Tan lay, abusing him and warning him against reporting the matter.

Vasavan was questioned about his oral statement. He denied making the statement to Inspector Teo, and claimed that both the Inspector and Rahman had given false evidence. However, he was unable to explain where Inspector Teo had obtained some of the information contained in his statement. Insofar as his s. 121(6) statement was concerned, Vasavan alleged that Inspector Teo had added to what Vasavan told him, although he conceded that para. 7 of the statement, which dealt with what happened in Tan's flat on the night of the murder, was true except as regards certain details.

Vasavan's daughter, Veronica, was called as a witness for the defence. She remembered having been present when the disclosure of Amnoi's affair with Tan was made. Following the disclosure her parents frequently quarrelled, and Vasavan became reserved. When he got worked up he would use vulgar language and throw things, like cups and flower pots, around the house. After quarrels he would lock himself up in his room for between an hour and an hour and a half. He occasionally slapped Amnoi, or refused to speak to her.

However, when Vasavan began going to church, a sense of peace seemed to return to him. He enjoyed church activities and there were fewer quarrels at home. This improved state of affairs continued until Rose began telephoning Vasavan in early 1984. He then began to withdraw from his family, and became reserved again, locking himself in his room. Veronica could see that a change had come over her father's life. She recognized that Rose was the cause of this, and Veronica said to Rose on the telephone words to the effect "You are bringing back the past to my father, and affecting him and my mother." She told Rose to stop talking to Vasavan about the past, recognizing that the relationship between her father and mother was turning sour again.

Dr. Wong Yip Chong, a highly qualified and experienced consultant psychiatrist, who conducted interviews with Vasavan, Amnoi, Veronica, Vasavan's sister and his pastor, and who sat through a substantial part of Vasavan's evidence in Court, was called as an expert witness for Vasavan. In Dr Wong's opinion, at the time when Vasavan decided, if indeed he did decide, to cause the death of Tan he was suffering from acute severe reactive depression, an abnormality of mind that substantially impaired his mental responsibility for his acts in causing or being a party to causing Tan's death.

Dr. Ang Ah Ling, a consultant psychiatrist at Woodbridge hospital was called by the prosecution with a view to rebutting the evidence of Dr. Wong Yip Chong. Dr Ang saw Vasavan twice, at the preliminary inquiry stage, for a total of about 3 hours, for the purposes of deciding whether Vasavan was fit to stand trial. He did not perceive any sign of mental illness, and saw no reason to suspect that Vasavan was suffering from any psychiatric illness at the time of the offence. He also sat through much of the evidence of Rose and of Vasavan. In Dr. Ang's view, taking into account Vasavan's evidence as to his own behaviour, and the evidence of Veronica, although it was possible to say that Vasavan displayed some of its symptoms, the overall picture presented did not justify a diagnosis that he was suffering from acute reactive depression at any material time.

Dr. J.M.N. Hilton, a distinguished Australian pathologist, was called as a defence witness. Dr. Hilton had been provided with Dr Clarence Tan's autopsy report on Tan, the complete transcript of Dr Tan's evidence, and a full set of the photographs in the case. He was in complete agreement with Dr Tan's conclusion that the cause of Tan's death was asphyxia due to ligature strangulation. However there were certain areas in which Dr Hilton's views parted company with, or at least differed in emphasis from, those of Dr Tan.

Dr Hilton did not agree that the evidence necessarily implied that Tan was alive when the ligature was applied. Furthermore, although he agreed with Dr Tan that the ligature was applied effectively, and with very considerable force before being fixed with a knot, Dr Hilton did not think it was necessarily true that two persons had applied the ligature. Indeed, if Tan had been knocked out before the ligature was applied, then the strangulation could have been carried out by one person. That scenario could have occurred if a blow had been delivered to Tan's thyroid cartilage, causing the degree of damage to that organ which was observed by Dr Clarence Tan. In Dr Hilton's opinion, the injury to Tan's thyroidcartilage was not the result of ligature strangulation, but was likely to have been caused by a blow delivered before the ligatute was applied.Such a blow would have caused a loss of consciousness or at least a severe loss of well-being. It followed, although Dr Hilton did not say so in terms, that if the injury to the thyroid cartilage was caused by a blow, and if the blow was struck before the ligature was applied, that the victim would have been effectively helpless when he was strangled, enabling the act of strangulation to be performed by one man.

Dr Hilton was referred to the s. 212 (6) statement of Wan, to which we have previously referred. He agreed that if the statement was true, the first preoccupation of Tan's assailants seemed to be to get him to the floor; that the ligature was initially applied by one person, followed by up to four persons. Dr Hilton conceded that this tended to support Dr Tan's conclusion that more than one person was involved in the act of strangulation, and that Wan's statement, if true, also suggested that Tan put up a struggle after he had been brought down, which tended to establish that the blow to the thyroid cartilage was not struck before Tan fell to the ground.

Phan gave evidence on his own behalf and called no other evidence. He told us that he had known Vasavan since he came to Singapore to work, in or about 1981. Vasavan, his foreman, was kind to him, and gave him sums of money from time to time with which to buy food and beer. Early in October 1984 Vasavan approached him about the possibility of assaulting a Chinese man who had been molesting his daughter, and Phan agreed, suggesting (after ascertaining that the intended victim was well-built) that he should recruit two other Thai friends to help him. Vasavan concurred, and Phan sought out Wan and Ah Poo. The former demurred but Ah Poo agreed to participate in the assault. There was no question of any monetary payment. Tan was to be punched until he was hurt.

Some days later Phan introduced Ah Poo and Wan to Vasavan at a chance meeting in the Toa Payoh coffee shop. By this time Wan had apparently been persuaded by Ah Poo to participate. They boarded a taxi and Vasavan showed them the block of flats in which Tan lived. However, there was no plan, and none of them knew what role each was to play beyond the fact that they were to use their fists to assault Tan.

On the night of the murder, Phan, Ah Poo and Wan met Vasavan, again by chance, in the Toa Payoh coffee shop. After the three Thais had drunk some beer, Vasavan took them outside, and hailed a taxi. It was only when the taxi reached Tan's block of flats that Phan realised where they had been driven to, and why they were there. Vasavan made a phone call, and then went up in the lift to Tan's flat. When he returned, they all went up together.

The door of Tan's flat was open. All four of them entered, and hid in a bedroom. The flat was in darkness. In due course Tan returned, and switched on the lights. Ah Poh ran into the room next doorwith a plastic bag in his hand. Phan had not seen this bag earlier. He heard the noise of metal, and then Ah Poo cried out. Phan and Wan rushed into the room which Ah Poo had entered to see what had happened to Ah Poo. The light was on, and Phan saw Tan lying on his back on the floor. Ah Poo was sitting on his chest. The lights were then switched off. Phan grabbed one of Tan's legs, and began hitting him in the stomach and below the waist. Tan was struggling and crying out, and Phan became afraid. He and Wan left the room in which Tan was lying, leaving Ah Poo inside. At this point Tan was alive, because he had been struggling and crying out. On leaving the room Phan saw Vasavan unlocking the door which led into the outside corridor.

Phan did not know how long Ah Poo was in the room with Tan after he and Wan left it. Vasavan returned to the room in which Ah Poo was, switched the light on and off and said: "That's enough." Ah Poo then emerged, with a wound in his forehead and his shirt soaked in blood. He said words to the effect that it was lucky that he, Ah Poo, knew something about Thai boxing. They all left the flat together, Phan being under the impression that Tan was alive. Either in the lift or after they had reached the ground floor, each of them was given $1000 by Vasavan. Phan protested, but Vasavan insisted that he should have the money. None of the Thais had asked for payment.

Like Phan, Wan gave evidence on his own behalf and called no witnesses. He came to work in Singapore with Ah Poo in mid-1983. Both are from Nongkhai province. Although Phan is also from Nongkhai, Wan told us that he did not meet Phan until October 1983. Their next encounter was in March l984, when Wan introduced Phan to Ah Poo. Wan did not meet Phan again until early October 1984. Then, on October 14, 1984, Phan came to see Wan at his worksite at Lorong Chuan, while Wan was with Ah Poo, and sought their help "to hit a Chinese man" who had molested the daughter of Phan's foreman. Although Ah Poo agreed to participate, Wan declined. He was soon to be married, and did not want to become involved.

On October 23 Ah Poo asked Wan to go out with him. They went to the Toa Payoh coffee shop, and met Phan and Vasavan. Wan was introduced to Vasavan who asked: "Phan has told you already?", by which Wan understood Vasavan to be referring to the intended beating up of the Chinese man. Ah Poo told Vasavan that Wan had declined to participate. After they had had something to drink, the four of them boarded a taxi which took them to a high rise building. Wan went along for the ride. When they reached the building, Wan saw Vasavan, Phan and Ah Poo whispering, and pointing up at the building. He did not know what they were whispering about, and did not join in. Later they went to a coffee shop in the vicinity, in another taxi. There was no conversation in the taxi or in the coffee shop.

There followed a second meeting at the Toa Payoh coffee shop on the night of the offence. Wan had gone to the coffee shop at Ah Poo's request. Phan ordered beer and food, and Wan heard Vasavan say words like: "Hit, hit and hurt him," and the words "hand" and "tie". Phan said: "Tie up the hands and the legs and hit.". Wan understood these remarks to be references to the intended assault, but he still did not want to be a part of it, and had told Ah Poo so before going to Toa Payoh.

Vasavan then conducted them to a taxi. Wan asked where they were going and Ah Poo put his arm around Wan's shoulder and said: "I don't know where the towkay will bring us to." Vasavan was carrying a yellow plastic bag. He did not say what was in it, or show its contents to anyone. The taxi took them to the same high-rise building they had previously visited. There was no conversation in the taxi.

Vasavan went into the building with the plastic bag, returned in a few minutes, and conducted them upstairs. They entered a flat, and Ah Poo put his arm around Wan's shoulder and said: "To-day we are going to hit that man." Wan was very shocked, but said: "Since I'm already here, I'll follow you." They all hid in a bedroom. Wan sat at the foot of a bed. He was frightened, but could not run away because the door leading out of the flat had been locked.

At 11.04 p.m. or thereabouts, they heard a sound. Ah Poo ran past Wan into an adjoining room, and in due course there was the sounds of fighting and someone falling. Phan entered the room into which Ah Poo had run, and Wan went to the door leading out into the corridor and tried to open it, without success. Wan then returned to the room which Ah Poo and Phan had entered. The light was on and he was shocked to see Ah Poo, Phan and a Chinese man fighting. Ah Poo called out to Wan to help, and Wan grabbed one of the man's legs. Shortly afterwards the door closed, and on seeing this, Wan re-opened the door and ran out into the hall. He was shaking with fright and did not know where to go. Phan followed Wan out, leaving Ah Poo in the room with the Chinese man. Wan went to the door from which he had entered the flat, and a minute or so later Vasavan unlocked it. Wan left the flat and entered the lift. He was very frightened that the Chinese man would come out and chase them, because he had been alive when Wan left the room in which the assault was taking place.

In the lift, on the way down, Vasavan handed Wan money which Wan refused to accept. Ah Poo grabbed the money, a $1,000 note, from Vasavan and put it in Wan's hand.

Findings and Verdict

I. Vasavan

We reject as untruthful Vasavan's evidence that he procured the assistance of Phan, Wan and Ah Poo merely to assault Tan, and not to kill him. We accept the evidence of Rose, as to whose credibility we had no doubt, that Vasavan first suggested that Thais be employed to kill Tan in or about January 1984, and that later in the year Vasavan repeated this suggestion, to which Rose ultimately agreed, with apprehension and reluctance. We bore in our minds that Rose was an accomplice, and that the charge against her had been reduced. We were nevertheless totally satisfied that her evidence was truthful, although she was vague about dates.

It was decided by Vasavan and Rose that Tan would be done away with upon his return from abroad in October 1984. Rose gave Vasavan $4,500 as reward for the Thais, and duplicate keys to the flat. Vasavan enlisted the help of Phan, a trusted subordinate, to kill Tan, and to procure the assistance of two other Thais for this purpose, since Vasavan was aware of

Tan's physical strength and his knowledge of martial arts. Vasavan bought a length of rope not, as he alleged, to tie the hands and feet of Tan with a view to facilitating the alleged assault, but for the purpose of strangling Tan, as stated by Vasavan in his own s. 121 (6) statement, which we find was a true record of what Vasavan told Inspector Teo, save as to so much of the statement that alleged that Vasavan did not take part in the actual assault.

Tan was strangled to death in his flat shortly after 11 p.m. on the night of 24 October. We find that Vasavan took part in the attack upon Tan, and that he did not remain outside the exercise room in which the attack upon Tan took place, as he alleged, both in his s. 121 (6) statement as well as his evidence. We are entirely satisfied, on the evidence, that Vasavan knew that Tan had been killed, in furtherance of the per-arranged plan of Vasavan, the two other accused and Ah Poo. Vasavan's evidence that he abused Tan and warned him against reporting the incident after the attack was over, was a lie.

As regards the defence of diminished responsibility, we reject Dr Wong Yip Chong's evidence that Vasavan was suffering from acute severe reactive depression at the time of the offence. Dr Wong was obliged to concede that this was his first experience in a long career of a defence of diminished responsibility being set up in a case in which the accused denied perpetrating the offence. We prefer the evidence of Dr Ang Ah Ling, whose conclusion, even accepting Vasavan's and Veronica's accounts of his behaviour after the discovery of Amnoi's infidelity (as to which more later), was that at no material time did Vasavan suffer from acute reactive depression, or any abnormality of mind as would have substantially impaired his dental responsibility for his acts. In Dr Ang's view, which we accept, the picture presentedby Vasavan after the discovery of the affair and the events which followed, was within the normal range of conduct of a spouse confronted with marital infidelity. There was no evidence of impairment in Vasavan's social or professional conduct, in which areas he functioned well. It was only at home that his anger and frustration surfaced. That picture militated against a diagnosis of acute reactive depression, a condition which would have resulted in a greater, and more pervasive, functional impairment. Vasavan was not only angry, which was natural, but he was frustrated, and his frustration was borne out of the fact that Tan was physically stronger than him, which prevented him from striking out at the cause of his anger. There was the further fact that Tan was Vasavan's brother.

The evidence, in Dr Ang's view (which we accept) established that over the months following the discovery of his wife's misconduct, Vasavan learned to cope with his feelings. His aggressive outbursts became less frequent, and his relationship with his family in due course returned to normal. However, despite a superficial reconciliation between Vasavan and Tan in mid-1981, Vasavan's deep-seated anger with, and hatred of, Tan never really resolved. If Vasavan's evidence was true, it was stirred up by Rose's complaints about Tan's conduct with Theresa, and her references to his relationship with Amnoi, culminating in the October telephone conversation. This conversation will have made Vasavan very angry with Tan, but there was no reason why, occurring as it did well over three years after Vasavan's discovery of his wife's affair with Tan, it should have provoked an acute reactive depression. By this time, Vasavan was a stable person. Having coped with much greater stress in January 1981, there was no reason why the October telephone conversation, minor by comparison, should have given rise to mental illness. What it did do was to provoke extreme anger, but Vasavan remained totally in control of himself. He went to see Phan, arranged for the recruiting of two more Thais, carried out the reconaissance of Tan's flat, bought the rope, and made the necessary arrangements with Rose. All his actions were those of a person who had complete control of his actions and his thinking, and there was no evidence of depressive symptoms, as opposed to anger and frustration, at this time.

We find that Vasavan has failed to establish on his evidence, on a balance of probabilities, a case that brings him within Exception 7 to s. 300 of the Penal Code.

Having so said, we are bound to add that, as a matter of fact, we find that the October telephone conversation never took place. If it loomed large enough in Vasavan's mind to have triggered, or at least to have contributed significantly, to the committing of the offence, it is remarkable that Vasavan should have omitted to mention it in his s. 121(6) statement. The conversation was, in our view, invented by Vasavan, to lay the ground for the story, told for the first time in this Court, that he decided to have Tan beaten up.

As regards Vasavan's own evidence as to his behaviour after he learned of his wife's affair, we regard as significant the fact that Amnoi was not called as a witness, and we draw an inference adverse to Vasavan resulting from this omission.

Veronica was a young child when the events of 1981 took place. It was obvious to us that she is deeply attached to her father, and we say no more than that we place little reliance on her evidence, at all events with regard to the period prior to l984.

We find Vasavan guilty as charged.

II. Phan

We find that Vasavan and Phan were close, having known each other since Phan first came to work in Singapore in 1981. When Vasavan and Rose decided that Tan was to die, Vasavan turned to Phan for assistance. We accept that Vasavan told Phan that the intended victim had molested his daughter. Vasavan and Phan agreed that two more Thais should be enlisted, and Vasavan left the recruiting of the additional men to Phan.

We reject Phan's evidence that all that he agreed to do was assault Tan, and we likewise reject his evidence that he agreed to assist Vasavan as a favour, and not for reward. We find that Phan was procured by Vasavan to kill Tan; that he was promised a sum of $1,000 when the deed was done, and a further $1,500 when he returned to Thailand, and that Phan agreed to participate. In October 1984 Phan's return to his country was imminent, hence the decision to kill Tan the night after the latter's return from abroad.

In consequence of Vasavan's approach for his assistance, Phan went to see Wan and Ah Poo, whom he knew far better than he was prepared to admit, and trusted more than his mates at his place of work, with a view to getting them to join in. Ah Poo agreed to participate; Wan declined to do so at first, but agreed later, having apparently been persuaded by Ah Poo. The understanding between the three Thais was that Tan was to be killed, and nothing less. We reject as wholly unbelievable Phan's evidence that the escapade was unplanned; that the roles of each of the Thais was not discussed; that the group's meetings at the Toa Payoh coffee shop on the night of the reconnaisance of the Laguna Park flat, and on the night of the attack, were accidental; and that neither he, nor the other two Thais, were shown the rope by Vasavan on the night of 24 October, or at least told about its intended use, prior to the commission of the offence.

We find that Phan who, in Vasavan's estimation "had good leadership and could control workers", played a pivotal role in organizing Tan's murder. Hence, as Vasavan said in his s. 121 (6) statement, the promised reward of $2,500 as against the $1,000 each of Phan's two compatriots was to receive. As Phan truly said in his oral statement to Inspector Teo, he joined in the attack upon Tan, and participated in the strangulation with the rope procured by Vasavan. We find him guilty as charged.

III. Wan

Wan was only 21 when the offence was committed. He was due to be married soon, and we accept that when he was first approached by Phan to assist in procuring the death of Tan in return for a payment of $1,000, he declined. However, we are satisfied beyond reasonable doubt that Wan was subsequently persuaded to participate in the plot to kill Tan. We reject his evidence that he was persuaded by Ah Poo to go to the Toa Payoh coffee shop in October 1984 in order to enjoy himself. We find that he went to the coffee shop with Ah Poo for the purpose of meeting Vasavan and Phan, on the first occasion in order to carry out a reconaissance of the Laguna Park block in which Tan lived, and on the second occasion to embark upon the attack in which Tan was killed. It follows that we reject Wan's evidence that he was only told by Ah Poo that the assault was to be carried out on 24 October, after they had entered Tan's flat that night. We find that, at the very latest, by the night of the reconnaisance Wan had agreed to participate in the killing of Tan, for which he was to receive $1,000. It is inconceivable that he and Ah Poo should have agreed to participate as a favour to Vasavan, who was a stranger to them. If Wan's evidence that he did not wish to take part in the plot was true, he had ample opportunity, on his own account of what took place, to distance himself from the conspirators, beginning on the night of the reconnaisance. He did not do so.

We find Wan guilty as charged. He took an active part in the strangulation of Tan, as he truly admitted both in his oral statement to Inspector Teo and in his s. 121(6) statement, both of which statements, we find, properly recorded what Wan told Inspector Teo through the interpreters, P. C. Lee and Prakorb, respectively.

It is our determination that Tan was attacked in his exercise room by Ah Poo, Vasavan, Phan and Wan and that, despite his strength, Tan was forced to the floor by sheer weight of numbers. All four assailants then set upon Tan, holding him down and raining blows on his face and body. At some stage, one of the assailants sat on Tan's chest and as he struggled and fought back the rope procured by Vasavan was double-looped three times around Tan's neck and pulled extremely tight by at least two, and probably all four, of his attackers, and then secured by a fixed knot. The consequent intense constricting force caused fractures to the horns of Tan's thyroid cartilage and to the body of that cartilage, bringing about Tan's death by asphyxia within two or three minutes. These conclusions are substantially supported by the evidence of Phan, the s. 121 (6) statements of Vasavan and Wan, the injury to Ah Poo and the conclusions of Dr Clarence Tan, which latter we accept. All four assailants knew that their mission was accomplished when they left Tan's flat on on the flight of 24 October, and each Thai was immediately paid $1,000 by Vasavan in accordance with their pre-arranged bargain. A further $1,500 was to be paid to Phan upon his departure to Thailand, which event was imminent

In the result, we find all three accused guilty, in that in furtherance of their common intention, and that of Ah Poo, they murdered Tan at his flat in Laguna Park shortly after 11 p.m. on the night of 24 October 1984. They are accordingly convicted as charged.

Also found at [1990] 1 CLJ 634